



Diversity Council Australia Ltd

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Matt Corrigan  
General Counsel  
Australian Law Reform Commission  
By email: [antidiscriminationlaw@alrc.gov.au](mailto:antidiscriminationlaw@alrc.gov.au)

## Religious Educational Institutions and Anti-Discrimination Laws

Dear Matt Corrigan,

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace.

We have over 1,200 member organisations, reaching more than 20% of the Australian labour market.

The issue of religious freedom and practice in the workplace is one that is of major interest to DCA and our members and we welcome the opportunity to make this submission.

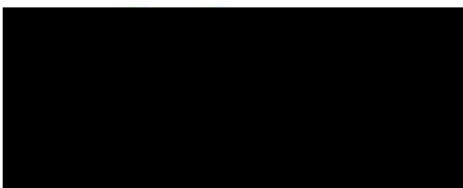
This submission draws on our earlier research and consultation with DCA members in previous inquiries to respond to the propositions in the consultation paper.

DCA has long held the view that exemptions to anti-discrimination legislation can weaken protections for marginalised groups and that religious exemptions on any grounds should be specifically limited to those circumstances where there is a specific religious element to employment or the provision of goods and services, mirroring inherent requirement and genuine occupational qualifications in other areas.

Previously, DCA has recommended that the government consider harmonisation of anti-discrimination laws, and while it is outside the scope of this inquiry, we believe that a review of all anti-discrimination laws would help provide consistency in this area.

Please feel free to contact myself or Cathy Brown, Director of Communications and Advocacy, on [REDACTED] or [REDACTED] you require any further information about this matter.

Yours sincerely



**Lisa Annese**  
Chief Executive Officer

# 1. ABOUT DIVERSITY COUNCIL AUSTRALIA

## Who we are

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We provide unique research, inspiring events and programs, curated resources and expert advice across all diversity dimensions to a community of member organisations.

## DCA's Membership represents over 20% of the Australian workforce

DCA's prestigious group of over 1,100 members is drawn from business and workplace diversity leaders and includes some of Australia's biggest employers. Our membership reaches over **20%** of the Australian labour market.

## About our members

1,100 member organisations, including almost 40 ASX100 Listed companies.

Our members are drawn from across the corporate, government and not-for-profit sectors and vary from small to large workforces in size.

Our founding members include ANZ, AMP, BHP, Boral, Coles, IBM Australia, Myer, Orica, Rio Tinto and Westpac.

DCA's Members are listed on our website here: <https://www.dca.org.au/membership/current-dca-members>.

## Our belief, vision and mission

- Our belief is that diversity and inclusion is good for people and business.
- Our vision is to create a more diverse and inclusive Australia.
- Our mission is to encourage and enable Australian organisations to create diverse and inclusive workplaces.

## What we do

DCA, formerly known as the Council for Equal Opportunity in Employment Ltd, was established in 1985 as a joint initiative of the Australian Chamber of Commerce and Industry and the Business Council of Australia to demonstrate the business community's commitment to equal opportunity for women.

Our focus since then has expanded to cover all aspects of diversity in employment, reflecting changes in practice to embrace all areas of the diversity of human resources.

DCA is not government funded - its income is generated from membership fees, sponsorships and services to business/employers.



## **Our Research**

DCA works in partnership with members to generate ground-breaking evidence-based diversity and inclusion resources that enables Australian organisations to fully leverage the benefits of a diverse talent pool.

**DCA research is grounded in the contributions of people with lived experience.** DCA projects use expert panels, focus groups, think tanks and surveys to make people with lived experience central to the project findings.

**DCA resources are ahead of the curve.** They establish leading diversity thinking and practice, enabling Australian organisations to re-imagine and reconfigure the way they manage talent in today's dynamic operating environments.

**DCA resources drive business improvement.** They are high impact, driving business improvement through providing evidence-based guidance on how to fully leverage the benefits of a diverse talent pool.

**DCA resources are practice focused.** They respond to the information needs of industry leaders and the people they employ.

**DCA resources speak to the Australian context.** DCA projects generate leading diversity thinking and practice that speaks to Australia's unique and distinctive institutional, cultural and legal frameworks.

**DCA resources considers all diversity dimensions.** The full spectrum of diversity dimensions are investigated including age, caring responsibilities, cultural background and identity, disability, Aboriginal and/or Torres Strait Islander status, sexual orientation, gender identity, intersex status, social class and work organisation.

## **POSITIONING**

### **The importance of taking an intersectional approach**

Intersectionality refers to the ways in which different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation. It is therefore critical when drafting and implementing parental leave policy that legislators, policymakers and those implementing such policies, understand intersectionality, and take an intersectional approach to implementing such policies.



## 2. Introduction and background

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace.

We have over 1,200 member organisations, reaching more than 20% of the Australian labour market.

DCA supports our member organisation in becoming more diverse and inclusive through Australian research, expert advice and via events and discussions.

We work across a range of diversity areas including Aboriginal and Torres Strait Islander status, gender, disability, age, race and cultural diversity, social class, sexuality and gender identity, alongside other areas.

Managing and promoting religious freedom and tolerance in the workplace is an issue of growing importance in Australian organisations given the increasingly culturally and religiously diverse nature of the workforce and the community.

In response to this interest, DCA created a guide for Australian organisations, [Creating Inclusive Multi-Faith Workplaces](#), which is designed to assist organisations in building workplaces that are not just meeting their requirements for legal accommodations, but supporting respect and inclusion for all. We have included a summary of this research as an appendix to this submission.

Our expertise is in workplace diversity and inclusion, so the majority of our response relates to the Propositions that will impact on workplaces. However, DCA's vision is for a more diverse and inclusive Australia, which informs the broader work we do.

### **DCA's view on exemptions to anti-discrimination laws**

DCA has long held the view that exemptions to anti-discrimination legislation can weaken protections for marginalised groups and that any such exemptions must be limited and carefully balanced.

In 2016<sup>i</sup>, responding to the exposure draft of *Marriage Amendment (Same-Sex Marriage) Bill*, DCA members told us they:

- Opposed the introduction of exemptions based on the concept of 'conscientious belief';
- Opposed the introduction of exemptions that would allow ministers of religion to refuse to solemnise a wedding for an LGBTIQ+ couple on the basis of a 'conscientious belief', regardless of the teachings of their church;
- Opposed the introduction of exemptions that would allow civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of 'conscientious belief'; and
- Opposed the introduction of exemptions that would allow civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of religious beliefs.

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<sup>i</sup> See DCA's *Submission on the Exposure Draft of the Marriage Amendment (same-sex marriage) Bill*, here: <https://www.dca.org.au/submissions/submission-exposure-draft-marriage-amendment-same-sex-marriage-bill>

In 2015, responding to the Australian Human Rights Commission's call for submissions in advance of AHRC inaugural Religious Freedom Roundtable, DCA argued that:

*We are strongly of the view that the current exemptions and exceptions in anti-discrimination law at both State and Commonwealth levels, diminish the appropriate coverage of universal anti-discrimination protections. DCA believes that religious exemptions on any grounds should be specifically limited to those circumstances where there is a specific religious element to employment or the provision of goods and services, mirroring inherent requirement and genuine occupational qualifications in other areas.*

This submission draws on our earlier research and consultation with DCA members in previous inquiries to respond to the propositions in the consultation paper.



### 3. DCA's response to the propositions in the consultation paper

#### **PROPOSITION A – Discrimination against students on the grounds of sexual orientation, gender identity, marital or relationships status, or pregnancy**

1. Religious educational institutions should not be allowed to discriminate against students (current or prospective) on the grounds of their sexual orientation, gender identity, marital or relationship status, or pregnancy, or on the grounds that a family member or carer has one of those attributes.
2. Religious educational institutions should be permitted to train religious ministers and members of religious orders, and regulate participation in religious observances or practices, unfettered by sex discrimination laws. Where applicable, religious educational institutions should also continue to benefit from the exception available to charities in relation to the provision of accommodation.
3. Religious educational institutions should be permitted to teach religious doctrines or beliefs on sex or sexual orientation in a way that accords with their duty of care to students and requirements of the curriculum.

#### **DCA's response to Proposition A:**

While our focus is on workplace inclusion, DCA's vision is to create a more diverse and inclusive Australia.

As a general principle, DCA does not believe that schools or religious educational institutions being allowed to discriminate against students (current or prospective) on the grounds of their sexual orientation, gender identity, marital or relationship status, or pregnancy, or on the grounds that a family member or carer has one of those attributes, would contribute to a more diverse or inclusive Australia.



**PROPOSITION B – Discrimination against staff on the grounds of sex, sexual orientation, gender identity, marital or relationships status, or pregnancy**

1. Religious educational institutions should not be allowed to discriminate against any staff (current or prospective) on the grounds of sex, sexual orientation, gender identity, marital or relationship status, or pregnancy.
2. Religious educational institutions should be able to select staff involved in the training of religious ministers and members of religious orders, and regulate participation in religious observances or practices, unfettered by sex discrimination laws. Where applicable, religious educational institutions should also continue to benefit from the exception available to charities in relation to the provision of accommodation.
3. Religious educational institutions should be able to require staff involved in the teaching of religious doctrine or belief to teach religious doctrine or belief on sex or sexuality as set out by that institution and in accordance with their duty of care to students and staff, and requirements of the curriculum.

**DCA’s response to Proposition B:**

DCA has previously made a [submission](#) to the Australian Human Rights Commission outlining our position on religious freedom and practice in the workplace. In that submission we argued that:

*We are strongly of the view that the current exemptions and exceptions in anti-discrimination law at both State and Commonwealth levels, diminish the appropriate coverage of universal anti-discrimination protections. ...*

*We believe that religious exemptions on any grounds should be specifically limited to those circumstances where there is a specific religious element to employment or the provision of goods and services, mirroring inherent requirement and genuine occupational qualifications in other areas.*

*Religious organisations are major employers in Australia and DCA is of the view that, as a general principle, religious organisations should be required to adhere to degree of accountability that reflects their level of participation in employment, which is an area of public life clearly covered by anti-discrimination law. We also consider that religious exceptions need to be constructed in a manner that appropriately recognises the religious/secular divide and balances the right to equality with rights to freedom of thought, religion and belief.*

*DCA is of the view that limiting religious exemptions to those circumstances where there is a specific religious element to employment, strikes an appropriate balance between religious rights and freedoms. For example, we support continued exceptions where a religious body employs a person as a priest, minister of religion etc. Similarly, if a religious school employs a teacher of religion it would appear reasonable for that person to be required to adhere to the relevant religion and its tenets.*

*However, DCA does not support general exemptions for religious bodies for any acts and practices. For example, it should be unlawful to discriminate against a school bus driver hired by a religious organisation on the grounds of [their] sexual orientation.*



### **PROPOSITION C – Preferring staff involved in the teaching, observance, or practice of religion on religious grounds**

1. In relation to selection, appointment, and promotion, religious educational institutions should be able to preference staff based on the staff member's religious belief or activity, where this is justified because:

- participation of the person in the teaching, observance, or practice of the religion is a genuine requirement of the role;
- the differential treatment is proportionate to the objective of upholding the religious ethos of the institution; and
- the criteria for preferring in relation to religion or belief would not amount to discrimination on another prohibited ground (such as sex, sexual orientation, gender identity, marital or relationship status, or pregnancy), if applied to a person with the relevant attribute.

2. The nature and religious ethos of the educational institution should be taken into account in determining whether participation of the person in the teaching, observance, or practice of the religion is a genuine requirement of the role.

#### **DCA's response to Proposition C:**

As noted above, DCA's view is that limiting religious exemptions to those circumstances where there is a specific religious element to employment, strikes an appropriate balance between religious rights and freedoms.

We agree with the ALRC's view that any powers to "preference staff based on the staff member's religious belief or activity" should be linked to genuine occupational requirements, should not amount to discrimination on grounds other than religious belief or activity, and must include a proportionality test.

#### **Other recommendations**

Previously, DCA has recommended that the government consider harmonisation of anti-discrimination laws.

We agree with the need for further reforms in this area, including to address the inconsistency arising from this reform. In this regard, we concur with the recommendations made by others for one single review of anti-discrimination law.





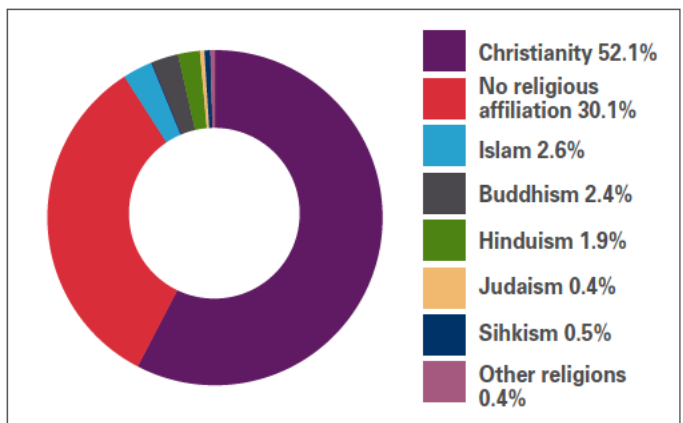
# CREATING INCLUSIVE MULTI-FAITH WORKPLACES



Australia has had a rich diversity of spiritual and cultural practices for thousands of years, beginning with the diversity of beliefs and practices among Australia’s Aboriginal and Torres Strait Islander Peoples.

From colonisation, Anglicans, Catholics, Methodists, Congregationalists, Presbyterians, Jews and Muslims began arriving in Australia. Since then, a diversity in migration has led to a rich environment of religious and spiritual beliefs in Australia.

**DCA developed this resource to help Australian organisations move from *accommodating* the religious beliefs and expressions of their staff, to building *inclusive workplaces* which respect and respond to diversity in faith affiliation and experience.**



Source: ABS, *Census of Population and Housing: Reflecting Australia – Stories From the Census, 2016 (2017.0)*

## WHAT?

We want to elevate the conversations that we have each day so they respect and include all. INCLUSION is a higher aspiration than simply meeting the legal requirements to accommodate people of faith (or no faith) at work.

**INCLUSION refers to getting the mix of people in an organisation to work together to improve performance and wellbeing.**

Inclusion in a workplace is achieved when a diversity of people (e.g., ages, cultural backgrounds, genders, perspectives) feel that they are:

- RESPECTED for who they are and able to be themselves;
- CONNECTED to their colleagues and feel they belong;
- CONTRIBUTING their perspectives and talents to the workplace; and
- PROGRESSING in their career at work (i.e., have equal access to opportunities and resources).





# WHY?

## THE CASE FOR MULTI-FAITH DIVERSE AND INCLUSIVE WORKPLACES

**JOB SATISFACTION AND MORALE**



Employees are **happier at work** when their organisation is **supportive of their religious and spiritual expression**.

**PERFORMANCE**



On the other hand, employees **perform worse** when **they feel they must hide and/or fake their faith identity** to fit in with their organisation's requirements.

**RETENTION**



Employees who feel they do not have to fake their faith identity to fit in with their organisation are **less likely to leave their organisation**.

**WELLBEING AND STRESS**



Employees who are able to disclose their faith at work have **higher perceived wellbeing and less stress** compared to those who feel they have to hide it.

**MARKET SHARE**



**The global religious industry is estimated to be worth trillions of dollars**, presenting opportunity for proactive organisations to capitalise on. For example, the global Halal market has been estimated to be worth up to US\$1.6 trillion per annum, while the religious tourism industry is valued at approximately US\$18 billion a year.

**BRAND**



Cultivating a diversity-differentiated organisational reputation can translate into **positive media attention**, as well as recruitment and business outcomes.

**TALENT COSTS**



**Religious discrimination, harassment, and vilification complaints** are lodged each year, with 2018 seeing an increase in some States and Territories. The majority of these complaints **occur in the workplace**. **Preventing discrimination and harassment** minimises organisational legal exposure and risk and reduces costs associated with absenteeism, turnover and loss of staff morale and productivity.

Research references are available in DCA's Full *Creating Inclusive Multi-Faith Workplaces* Guidelines.



## HOW?

- 1. Start with understanding the law:** Inclusion is about more than just meeting your legal obligations, but it helps to understand Australia's laws covering protection from religious discrimination at work.
- 2. Get counting:** Use DCA's principles for inclusive data collection to help you understand the faith diversity of your workforce and subsequent need for faith-based inclusion within your organisation.
- 3. Build inclusion into ALL of your policies:**
  - Update your **D&I policy** to include faith, and no faith, as part of a person's identity.
  - Consider how to make your **dress codes** inclusive; so that they provide flexibility to accommodate employees' religious or cultural obligations, while meeting health and safety requirements.
  - Check if your **leave policies** allow for employees to meet cultural and religious obligations.
  - Include staff from a variety of backgrounds when **planning events** to ensure these are inclusive.
  - Where feasible, **Multi-faith Quiet Rooms** are an excellent way to be inclusive of employee needs for prayer, meditation, and quiet reflection for employees of all faith and of no-faith.
- 4. Educate to avoid stereotypes and bias:** Faith-based stereotyping is extremely common and in the workplace can lead to inaccurate ideas that people from particular faiths are not capable of taking on certain roles.



### BALANCING RELIGION WITH OTHER HUMAN RIGHTS AT WORK

A common question we receive at DCA is how to handle situations where someone's religious beliefs, challenge another person's belief or identity, especially if this has an impact on the needs of the business.

There are no easy answers, but the principle of inclusion – ensuring that all employees are respected, connected, and able to contribute and progress – can help navigate some of these situations.

In practice, aspiring for inclusion means:

#### 1. STARTING WITH MUTUAL RESPECT

Inclusive organisations are ones where a diversity of employees are respected. When you encounter a situation where it appears that two ideas may be in conflict with each other, a good point to start from is by ensuring that all employees are treated with respect. In most cases, starting with respect enables there to be a sensible compromise.

#### 2. WELCOMING RELIGIOUS BELIEFS BUT RECOGNISING THAT WORK IS NOT THE PLACE FOR PROSELYTISING – UNLESS YOU ARE EMPLOYED TO DO THIS

Inclusive workplaces welcome and encourage religious beliefs and expression, but religious expression shouldn't involve proselytising at work (unless that is the actual job).

#### 3. SEPARATING RELIGIOUS BELIEFS FROM RELIGIOUS EXPRESSION

Many people in Australia have deeply held religious beliefs, but expressing those beliefs in a way that is harmful to other people could breach anti-discrimination laws, and may also not be respectful in a workplace context.

#### 4. RECOGNISING THAT COMMUNITY EXPECTATIONS ARE CONSTANTLY SHIFTING OVER TIME

At various times in history, religious beliefs were used to justify a range of practices including slavery, prohibitions on interracial marriage, and the criminalisation of homosexuality. But in 2019, thankfully, the views and expectations of the community have since shifted.